

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Kevin Brathwaite,)	
)	
Plaintiff,)	
)	
v.)	
)	
Thomas Carroll, Warden, et al.,)	C.A. No. 04-1542-GMS
)	
Defendants.)	

DEFENDANTS' REPLY MEMORANDUM
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

The State Defendants, by and through counsel, pursuant to Local District Court Civil Rule 7.1.3 (c) (2) hereby offer this reply in support of their Motion to Dismiss previously filed on behalf of all Defendants as follows:

A. BEYOND DOUBT PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF HIS CLAIMS AGAINST ADMINISTRATIVE DEFENDANTS THAT WOULD ENTITLE HIM TO RELIEF.

The Administrative Defendants filed their original Motion to Dismiss pursuant to Fed. R. Civ. P. 12 (b) (6). Here, Defendants have demonstrated where, as is the case here, even accepting Plaintiff's factual allegations as true, and drawing all inferences in Plaintiff's favor, the pleading failed to set forth sufficient information to determine whether a cognizable legal theory exists on which relief could be granted to him. Plaintiff's Response simply reiterates his previous claims that the Administrators of the facility are responsible for the care and custody of all inmates, and thus are liable for any alleged deprivation of his constitutional rights. (D.I. 33) Nonetheless, Plaintiff has offered merely bald assertions, subjective characterizations, and legal conclusions. That

Plaintiff has not alleged how Administrative Defendants participated in any actions or omissions that violated his constitutional rights, defeats his claims for relief.

Consequently, Plaintiff's assertions are insufficient to defeat Administrative Defendants Motion to Dismiss for failure to state claim.

B. PLAINTIFF HAS FAILED TO DEMONSTRATE THAT DEFENDANTS CUNNINGHAM, GODWIN, LOVETT, DUNN AND OVERMEYER HAD ANY PERSONAL INVOLVMENT IN ALLEGED VIOLATIONS OF HIS CONSTITUTIONAL RIGHTS

Plaintiff admittedly was placed in the infirmary on suicide watch after he attempted to hang himself by using a linen bed sheet. As a result of Plaintiff's placement on suicide watch where he was subject to observation twenty-four hours per day, and was prevented from possessing more than a suicide mattress, gown and suicide blanket in his cell.(See Mental Health Observation Checklist attached as Exhibit A). However, Plaintiff managed to get a hold of various items of contraband i.e. cell phones, battery charger, and non-commissary food stuffs while he remained housed in the infirmary. (See Incident Report prepared by Lt. Godwin attached hereto as Exhibit B). Routine cell shake-downs by officers uncovered the possession and ultimate confiscation of contraband. (See Incident Report prepared by Violet Dunn attached hereto as Exhibit C.) Confiscating the non-allowable items from Plaintiff's cell does not demonstrate that Lt. Godwin or any of the officers named in his amended complaint deprived Plaintiff of a constitutional right. Plaintiff has offered nothing more than unsubstantiated allegations that various prison officers deprived him of his constitutional rights.

C. CONCLUSION

Wherefore, for the reasons stated herein, and for the reasons stated in the

Defendants' opening Memoranda of points and authorities in support of their Motion to Dismiss, adopted herein, the State defendants are entitled to dismissal of Plaintiff's claim against the Administrative Defendants and State Defendants as amended, for failure to state a claim for which relief could be granted.

**STATE OF DELAWARE
DEPARTMENT JUSTICE**

/s/ Ophelia M. Waters
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Dated: August 12, 2005

Attorney for Defendants

CERTIFICATE OF MAILING AND/OR DELIVERY

I hereby certify that on August 12, 2005, I electronically filed *Defendants' Reply Memorandum in Support of Defendants' Motion to Dismiss* with the Clerk of the Court using CM/ECF. I hereby certify that on August 12, 2005, I have mailed by United States Postal Service, the document to the following non-registered participant inmate plaintiff:

Kevin C. Brathwaite
SBI #315294
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

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